

9 FAM 42.32(A)

FIRST PREFERENCE - PRIORITY WORKERS

(CT:VISA-1907; 10-01-2012)
(Office of Origin: CA/VO/L/R)

9 FAM 42.32(A) RELATED STATUTORY PROVISIONS

(CT:VISA-1907; 10-01-2012)

See INA 203(b), INA 203(d) and Section 302 of Public Law 106-396.

INA 203(b)

Preference Allocation for Employment-Based Immigrants. - Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

1. Priority workers. - Visas shall first be made available in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
 - (A) Aliens with extraordinary ability. - An alien is described in this subparagraph if –
 - (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
 - (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
 - (iii) the alien's entry into the United States will substantially benefit prospectively the United States.
 - (B) Outstanding professors and researchers. -An alien is described in this subparagraph if –
 - (i) the alien is recognized internationally as outstanding in a specific academic area,
 - (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
 - (iii) the alien seeks to enter the United States-
 - (I) for a tenured position (or tenure-track position) within a

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university or institution of higher education to teach in the academic area,

- (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
- (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(C) Certain multinational executives and managers. An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

INA 203(d)

Treatment of family members.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

Section 302 of Public Law 106-396 TREATMENT OF EMPLOYMENT FOR PURPOSES OF OBTAINING IMMIGRANT STATUS AS A MULTINATIONAL EXECUTIVE OR MANAGER.

a. In General.--Notwithstanding section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)), in the case of an alien described in subsection (b)—

- (1) any services performed by the alien in the United States as an officer or employee of INTEL SAT or any successor or separated entity of INTEL SAT, and in a capacity that is managerial or executive, shall be considered employment outside the United States by an employer described in section 203(b)(1)(C) of such Act (8 U.S.C. 1153(b)(1)(C)), if the alien has the status of a lawful nonimmigrant described in section 101(a)(15)(G)(iv) of such Act (8 U.S.C. 1101(a)(15)(G)(iv)) during such period of service; and
- (2) the alien shall be considered as seeking to enter the United States in order to continue to render services to the same employer.

b. Aliens Described.--An alien described in this subsection is an alien—

- (1) whose nonimmigrant status is maintained pursuant to section 301(a); and
- (2) who seeks adjustment of status after the date of privatization to that of

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an alien lawfully admitted for permanent residence under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) based on section 203(b)(1)(C) of such Act (8 U.S.C. 1153(b)(1)(C)) during the period in which the alien is—

- (A) an officer or employee of INTELSAT or any successor or separated entity of INTELSAT; and
- (B) rendering services as such an officer or employee in a capacity that is managerial or executive.